

[Print Page](#)

Tuesday, April 24, 2012 Last modified: [Thursday, January 22, 2009 10:00 AM PST](#)

Smoking ban extended to common areas of multiunit housing

BY CHRISTINA HANFORD

Once again, Santa Monica has extended its far-reaching smoking ban.

At a meeting earlier this month, the Santa Monica City Council unanimously approved an ordinance amending the current anti-smoking law to regulate smoking in common areas of multiunit residential housing.

The item had gone before the council in October last year, but the council sent the ordinance back to the drawing board for revisions that would protect noncompliant tenants from possible eviction.

City attorney Marsha Moutrie pointed out at that meeting that, because of rent control in Santa Monica, "landlords may have a huge financial incentive to evict existing tenants."

While that would be a financial motive independent of the purposes of the ordinance — to protect health and safety — it is still a reality.

"Council directed staff to go back and prepare an ordinance that would do two things, curb and actually prohibit smoking in common areas of multi-unit residential properties, while also protecting the rights of existing tenants from possible eviction or harassment as a result of the prohibition," said attorney Adam Radinsky, head of Santa Monica's Consumer Protection Unit.

"The ordinance we have prepared, we believe, meets both of those concerns of council."

The ordinance provides a right of action for any person to go to Small Claims Court and collect damages of at least \$100 in response to a person who smokes in a common area of a multiunit residential property, other than where an exception applies, Radinsky said.

There are several ways that the proposed ordinance protects tenants from eviction.

"First of all, the ordinance states that it may not be used as grounds to terminate a tenancy," Radinsky said. "The second way is that it states that smoking in common areas shall not be considered a 'violation of law', which is the operative term in almost all standard leases in use throughout the city.

"And lastly, it also does not include any criminal penalty, unlike all the other violations in the smoking ordinance, which you may recall are criminal infractions."

The ordinance allows but does not require property owners to designate a smoking location in the common areas of their properties, with certain restrictions, Radinsky said.

It requires that property owners both post signs on their property advising of this law and provide notice to all affected tenants, Radinsky said.

The council also approved a strong education and outreach program to advise landlords and tenants of their various rights and responsibilities under the law, and to provide the many resources for quitting smoking that already exist in the state.

About a dozen people spoke at the meeting, voicing their views on the proposed ordinance, including representatives of the American Cancer Society, the American Lung Association and Smokefree Air For Everyone (S.A.F.E.), as well as people affected by illnesses such as cancer and asthma. Almost all were supportive of the law.

"Much as we like the notion of personal liberty to do as we please, nonetheless, that liberty needs to have some constraints when it threatens the health of others," said William McCarthy, a professor at UCLA and a representative of the American Cancer Society.

Santa Monica resident Beth Miller asked the council to pass the ordinance as it stood and strengthen it in a year or so.

"If a landlord is being required not to evict, at least a landlord should be required — if not now, at least in the future — to

disclose to prospective tenants where the smoking-permitted and non-smoking units are located," Miller said. "This does not require registration of people who smoke."

She continued, "I have asthma. Right before I moved into my unit, I asked the landlord if there were any smokers around me. I was told [that] they didn't think so. But apparently, my neighbor smokes cigars heavily."

"If I had known this, I would not have moved into the apartment. So I believe that disclosure is very important."

Several others also supported the idea of disclosure of smoking and nonsmoking units in Santa Monica's multiunit residential buildings, and the council asked city staff for more information about that concept.

But Santa Monica Rent Control Board member Marilyn Korade-Wilson, who spoke at the meeting as a private citizen, was concerned.

"I continue to be opposed to the ordinance," she said. "I appreciate the efforts that have been made by Mr. Radinsky and the council, but there are still serious concerns."

Korade-Wilson said the ordinance would have a "disparate impact" on low-income and disabled people, would "create litigation between neighbors" and "could conceivably be used as a harassment tool."

"I would prefer that we explore, voluntarily, programs and also that the ordinance perhaps go in effect for future developments," she said.

Santa Monica City Councilman Kevin McKeown said he took the matter very seriously and had balanced both issues. He said he felt for the tenant who was "feeling a threat of losing their apartment because of smoking," but also felt for the tenant who "is trapped with a neighbor who is smoking in a common area."

"It has become clear to me that I have to side with the health impact," McKeown said, "because I think that the tenancy impact, the eviction impact, has been very successfully addressed by our legal staff."

The council will vote on a second reading of the ordinance, as is standard procedure, at a future meeting.